

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.12.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE N.PAUL VASANTHAKUMAR

W.A. NO. 777 OF 2007
W.P. NOS. 13742, 13743, 14024, 18075, 19077 & 19078 OF 2007
AND
M.P. NOS. 1 OF 2007
M.P. NOS. 2 OF 2007 & M.P. NO. 4 OF 2007

W.A. NO.777 OF 2007 & WP.No.19077/07 & WP.19078/07 :

1. The General Secretary
Kovai Mavatta Pricol Thozhilalar
Thozhir Sangam
2/267, Uday Nagar
Ganapathy (PO), Coimbatore 641 06.
2. The General Secretary
Kovai Mavatta Pricol Employees
Trade Union (Regd.)
122A1, Soundarya Illam
Ranga Nagar
Perianaickenpalayam
Coimbatore 641 020. ... Appellants 1 & 2 in WA.777/07
... 8th & 9th Respondents in WP.19077 & 19078/07

- Vs -

1. The General Manger - HR
The Management of Pricol Ltd.
Perianaickenpalayam
Coimbatore 641 020. ... 1st Respondent in WA.777/07
... Petitioner in WP.No.19077/07 & 19078/07
2. The Secretary to Government of Tamil Nadu
Labour & Employment Department
Secretariat, Chennai 600 09. ... 2nd Respondent in WA.777/07
... 1st Respondent in WP.19077/07 & 19078/07
3. The Presiding Officer
Industrial Tribunal
Chennai 600 009. ... 3rd Respondent in WA.777/07
... 2nd Respondent in WP.19077/07 & 19078/07

4. The General Secretary
Kovai Mavatta Pothu Thozhilalargal
Munnetra Sangam (LPF)
710A, Cross Cut Road, Tatabad
Coimbatore 641 012. .. 4th Respondent in WA.777/07
.. 3rd Respondent in WP.19077/07 & 19078/07
5. The General Secretary
Kovai Mavatta Poriyiyal Pothu
Thozhilalar Sangam (AITUC)
83-G, Kandasamy Nagar
PNM Colony
Coimbatore 641 019. .. 5th Respondent in WA.777/07
.. 4th Respondent in WP.19077/07 & 19078/07
6. The General Secretary
Kovai Mavatta General Engineering
and Mechanical Workers Union (CITC)
Coimbatore - 641006. .. 6th Respondent in WA.777/07
.. 5th Respondent in WP.19077/07 & 19078/07
7. The General Secretary
Coimbatore Desiya Engineering and
General Employees Union (INTUC)
37, Head Post Office Road
Coimbatore 641 01. .. 7th Respondent in WA.777/07
.. 6th Respondent in WP.19077/07 & 19078/07
8. The General Secretary
Pricol Working Peoples Trade Union
15, Pattakra Street
Jothipuram
Coimbatore 641 047. .. 8th Respondent in WA.777/07
.. 7th Respondent in WP.19077/07 & 19078/07

WP.No.13742 of 2007 :

The Secretary
Kovai Maavatta Pricol Employees Trade Union
(Regd.) 122A1, Soundarya Illam,
Ranga Nagar, Perianaickanpalayam,
Coimbatore - 641020.

Petitioner in WP.No.13742 & 13743/07

vs

1. Government of Tamil Nadu,
Rep. by The Secretary to Government,
Labour and Employment Department,
Fort St.George, Chennai - 600009.

1st Respondent in WP.13742 & 13743/07

2. The Commissioner of Labour,
Labour Welfare Building,
DMS Compound, Chennai - 600006.

3. The Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore - 641018.

2 & 3rd Respondent in WP.13742/07

4. The Management of Pricol Ltd.,
Perianaickanpalayam,
Coimbatore - 641020.

4th Respondent in WP.13742/07
2nd Respondent in WP.13743/07

WP.No.14024 of 2007 :

Pricol Limited,
Perianaickenpalayam,
Coimbatore - 641020,
rep. by its Senior Manager - HR
and Authorised Representative,
Mr.M.Manickam.

Petitioner in WP.14024/07

vs

1. The Secretary to Government,
Labour and Employment Department,
Fort St.George, Chennai - 600009.

2. The General Secretary,
Kovai Maavatta Pothu Thozhilarlarga Munnetra Sangam,
Coimbatore (LPF)

3. The General Secretary,
Proiyeal Pothu Thozhilalar Sangam (AITUC)
Coimbatore.

4. The General Secretary,
Kovai Maavatta General Engineering and
Mechanical Workers Union (CITU)

5. The General Secretary,
Desiya Engineering and General,
Employees Union (INTUC)
Coimbatore.

6. The General Secretary,
Pricol Working Peoples Trade Union,
Coimbatore.

7. The General Secretary,
Kovai Maavatta Pricol Thozhilalar
Thozhirsangam, Coimbatore.

8. The General Secretary,
Kovai Maavatta Pricol Employees Trade Union,
Coimbatore.

Respondents in WP.14024/07

WP.No.18075/07 :

The Secretary,
Kovai Mavatta Pricol Employees Trade Union
(Regd.) 122A1, Soundarya Illam,
Ranga Nagar, Perianaickanpalayam,
Coimbatore - 641020.

Petitioner in WP.18075/07

vs

1. Government of Tamil Nadu,
Rep. by The Secretary to Government,
Labour and Employment Department,
Fort St. George, Chennai - 600009.

2. The Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore - 641018.

3. The Management of Pricol Ltd.,
Perianaickanpalayam,
Coimbatore - 641020.

Respondent in WP.18075/07

Writ Appeal filed against the order dated 30th May, 2007, passed by
learned single Judge in MP.No.2/2007 in W.P. No.19077 of 2007.

MP.No.2/2007 filed for the order of interim stay of operation of the
order of the 1st respondent dated 24.05.2007 in G.O(D).No.398 pending
disposal of WP.No.19077/2007, filed under Article 226 of the Constitution
of India, praying for the issuance of a Writ of Certiorari, calling for
the records of the 1st Respondents dated 24.05.2007 in G.O(D) No.398 and
quash the same.

Petitions filed under Article 226 of the Constitution of India,

1) praying for the issuance of a Writ of Certiorari, calling for the
records of the 1st respondent dated 24.05.2007 in G.O(D) No.397 and quash
the same (WP.19078/07)

2) Praying for issuance of a Writ of Mandamus, directing the 1st
respondent herein to issue orders under Section 10-B of the Industrial
Disputes Act 1947 to both parties to restore status quo as on 02.03.2007
viz-a viz all the issues related to the strike as well as lockout (in
WP.13742/07).

3) praying for issuance of a Writ of Certiorari, calling for the records from the files of the 1st respondent relating to the impugned G.O.No.287, Labour & Employment (D1) Department, dated 10.04.2007 and quash the same (in WP.14024/07)

4) praying for issuance of a Writ of Mandamus directing 1st respondent herein to dispose of the representation of the petitioner dated 22.04.2007 and to take action against the 3rd respondent for committing unfair Labour practise under Section 25-U of this Industrial Disputes Act 1947 (in WP.18075/07).

5) praying for issuance of Writ of Certiorarified Mandamus calling for the records from the files of the 1st respondent relating to the impugned G.O (D) 287, Labour and Employment (D1) Department dated 10.04.2007 and quash the same and consequently direct the 1st respondent to refer all the issues namely (i) the justifiability of partial lock out dated 16.03.2007 imposed on the employees of Satellite Vendor units of the Management of Pricol Ltd., (ii) Justifiability of termination of hundreds of so called other contract labourers of the Management of Pricol Ltd., during conciliation proceedings (iii) justifiability of partial lock out dated 05.04.2007 of Ms.Neelaveni, Geetha Rani, Murali Manoharan, Selvaraj, and Sivasami (iv) justifiability of punishment of Break-in-servie imposed on 70 employees by letter - dated 05.04.2007 and (v) justifiability of partial lock-out dated 05.04.2007 of M/s. K.Kaliannan and 5 others for adjudication and to pass such other order or direction as this Honourable Court may deem fit and proper in the circumstances of the case, and thus render justice.

*Prayer amended as per order dated 16.04.2007 by KCJ in MP.No.3/07 in WP.13743/07. (WP.No.13743/07).

For Appellant : Mr. S.Kumaraswamy
in WP.No.777/07

For Petitioners : Mr.S.Kumaraswamy in WP 13742 & 13743/07
Mr. Sanjay Mohan for
M/s. Ramasubramaniam Associates in
in WP 14024/07
Mr. A.L.Somayaji, SC for M/s.T.S.Gopalan
& Co. in WP 19077 & 19078/07
Mr. K.Suresh in WP 18075/07

For Respondents : Mr.A.L.Somayaji, SC, for M/s.T.S.Gopalan
& Co. in WA 777/07 for R1
Mr. D.Srinivasan, AGP for RR-2 & 3 in
WA 777/07; for R-1 in WP 13743, WP.13742, 14024 &
& for RR-1 & 2 in WP 18075/07, 19077, 19078/07
Mr. Sanjay Mohan for
M/s.Ramasubramaniam Associates for R-2
in WP 13743/07
Mr. S.Kumaraswamy for RR-1 to 7 in
WP 14024/07.

COMMON JUDGMENT

S.J.MUKHOPADHAYA, J.

In all these cases, as common question of law involved and arise out of dispute between the parties, they were heard together and disposed of by this common judgment.

2. Under the Management of Pricol Ltd. - petitioner in some cases, (hereinafter referred to as 'Company'), a number of workmen were working. Apart from Kovai Mavatta Pricol Thozhilalar Thozhir Sangam and the Kovai Mavatta Pricol Employees Trade Union (hereinafter referred to as 'Trade Union'), there are other recognised trade unions in the company.

Six workers of the company, who were posted at Coimbatore (State of Tamil Nadu), were suddenly transferred to a far off place in the State of Uttarakhand. Such transfer gave rise to a strike call given by the workers. There being dispute, the State Government had to refer such dispute and had to pass prohibitive orders u/s 10 (3) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') as also order u/s 10-B of the Act. The company and trade unions have challenged such order in their respective writ petitions as detailed hereunder :-

i) W.P. No.13742/07 - preferred by the trade union for direction on the State to issue order u/s 10-B of the Act and to restore status quo as on 2nd March, 2007.

ii) W.P. No.13743/07 - preferred by the trade union against G.O. (D) No.287 dated 10th April, 2007, issued u/s 10 (1) (d) of the Act.

iii) W.P. No.14024/07 - preferred by the management of the company against the aforesaid G.O. (D) No.287 dated 10th April, 2007.

iv) W.P. No.18075/07 - preferred by trade union for direction on respondents to dispose of their representation and to take action against the management of the company u/s 25-U of the Act for committing unfair trade practice.

v) W.P. No.19077/07 - preferred by management of the company against G.O. (D) No.398 dated 24th May, 2007, issued by the State u/s 10-B of the Act.

vi) W.P. No.19078/07 - preferred by the management of the company against G.O. (D) No.397 dated 24th May, 2007, issued u/s 10 (1) (d) of the Act.

In one of the writ petition, W.P. No.19077/07, learned single Judge having passed interim order on 30th May, 2007, W.A. No.777/07 has been preferred by the trade union against the interim order.

3. At the time of hearing, learned counsel appearing on behalf of the trade union submitted that in view of notification issued u/s 10-B of the Act, W.P. No.13742/07 has become infructuous. It was further informed that during the pendency of the writ appeal and other writ petitions, in view of interim order passed by this Court in the writ appeal, as industrial peace is existing, the trade union has decided not to press W.P. Nos.13743 and 18075/07. He requested to dispose of W.A. No.777/07 taking into consideration the submission of the parties and to dismiss the

rest three writ petitions preferred by the management of the company on its own merits.

4. It appears that 4 workers of Plant-III and 2 workers of Plant-I were transferred by the company on 3rd March, 2007 from Coimbatore (State of Tamil Nadu) to a far distance to Uttrakhand. About 600 workers of Plant-III immediately proceeded on strike followed by 1500 workers of Plant-I, who proceeded on strike on 5th March, 2007. The parties took up the matter with the Assistant Commissioner of Labour (C), Coimbatore on 7th March, 2007 and 9th March, 2007, but the management of the company refused to recall the order of transfer. There was a road blockade agitation on 9th March, 2007. Demonstrations were made by about 1000 workers of Plant-I and Plant-III, which continued till 10th March, 2007. Coimbatore-Mettupalayam road was obstructed. The State officials such as Revenue Divisional Officer and Assistant Commissioner of Labour had to reach the spot to persuade the workers to withdraw the strike. On 10th March, 2007, about 2166 workers were arrested by police, including 500 women and workers working in ancillary units of the company. They were released on the same day. The Joint Commissioner of Labour, Coimbatore also tried to settle the dispute, but failed to persuade. The management demanded that the workers should withdraw the strike and give an individual undertaking before reporting to work. The workers wanted recall of the order of transfer. In absence of any reconciliation, the management declared lockout on 16th March, 2007 in respect of 16 workers of Plant-I and 15 workers of Plant-III. On 17th March, 2007, lockout was also declared in regard to 17 workers of Plant-I and 17 workers of Plant-III. According to the management, they had declared partial lockout in respect of 64 workers on 16th March, 2007.

On 20th March, 2007, about 200 workers reported for work. The Commissioner of Labour also intervened on 2nd April, 2007, but failed. About 1500 workers entered the company on 3rd April, 2007 and instigated the other workers not to work. On the complaint of the management, the police tried to remove the striking workers, many of whom threatened immolation, but in view of disturbance, the police had to use force.

A number of students of Coimbatore Law College, in support of the workers, observed fast on 4th April, 2007, along with 80 workers of the company. It was also informed that the striking workers were persuading the traders, public and political parties to render their support. This was reported by the Joint Commissioner of Labour, Coimbatore, who also informed that the situation was grave and serious. On 4th April, 2007, proposal was sent for referring the dispute to Tribunal and to prohibit the strike and lockout. Revised proposal was forwarded by Commissioner of labour on 5th April, 2007, for such reference u/s 10 (1) (d) and for issuance of prohibitory order u/s 10 (3) of the Act.

On the same day, 5th April, 2007, management imposed punishment of break-in-service on 147 workers. In the aforesaid situation, the State Government had to make reference of the dispute u/s 10 (1) (d) by G.O. (D) No.286 dated 10th April, 2007. Further, taking into consideration the situation, the State Government issued prohibitory order u/s 10 (3) vide G.O. (D) No.287 dated 10th April, 2007, gist of which could be derived from the order, as quoted hereunder :-

"LABOUR AND EMPLOYMENT (D1) DEPARTMENT

G.O. (D) No.287

Dated : 10.04.2007

1. G.O. (D) No.286, Labour and Employment Department dated 10.04.2007

2. From the Commissioner of Labour, Letter No.A4/12886/2007, dated 10.3.2007, 12.3.2007, 13.3.2007, 27.3.2007, 4.4.2007 & 5.4.2007

Order :

Whereas the Government by Government order first read above have referred the 7 issues relating to

- (i) the transfer of certain workers of Pricol Limited, Coimbatore to their Plant at Uttaranchal State.
- (ii) Legality and justifiability of the strike by workmen of Pricol Limited, Coimbatore.
- (iii) Partial Lockout of 64 employees, by the management of Pricol Limited, Coimbatore.
- (iv) Engagement by the management of new Contract Labours through new contractors pending conciliation when the workmen are on strike.
- (v) The justifiability of the insistence of the management of Pricol Limited, Coimbatore, that all workmen should give individual undertaking.
- (vi) The justifiability of the demand of the Kovai Mavatta Pricol Thozhilalar Thozirsangam and Kovai Mavatta Pricol Employees Trade Union that the management of Pricol Limited, Coimbatore, should negotiate only with them.

And whereas the Government after considering all the aspects of the Commissioner of Labour, the circumstances of this dispute, the sequence of events masting from the transfer of workmen leading to the commencement of the strike by the workmen of Pricol Limited, Coimbatore, Plant-I and III, the consequent road blockade resorted to by the workmen, large number of workmen involved in the dispute and the reluctance of the management and the Union to set right the issues through conciliation, are of the opinion that the strike in Pricol Limited, Coimbatore, Plant-I and Pricol Limited, Coimbatore, Plant-III and the partial lockout of workmen of Pricol Ltd., Plant-I and Plant-III, numbering 64, should be prohibited.

Now, therefore, in exercise of the powers conferred by section 10 (3) read with section 23 (b) of the Industrial Disputes Act, 1947, the Governor of Tamil Nadu hereby makes the following order:-

ORDER :

Pending adjudication of the industrial disputes referred for adjudication to the Industrial Tribunal, Chennai, in the Government order first read above, the Government prohibit the continuance of the strike by the workmen of Pricol Limited, Coimbatore, Plant-I and Pricol Limited, Coimbatore, Plant-III and the partial lock out of 64 workmen of Pricol Limited, Coimbatore, Plant-I and Pricol Limited, Coimbatore, Plant-III, as listed in the Annexure to this order, with immediate effect."

In view of the prohibitory order, the lockout was withdrawn, the workers also returned for work except 6 workers of Plant-III and 5 workers of Plant-I in respect of which partial lockout was declared by the management. The management also ordered break-in-service in respect of 92 workers of Plant-I and 54 workers of Plant-III, total of 147 workers.

A number of workers, who were working in the satellite vendor unit of the company, in respect of them, notice u/s 25-FFA was issued proposing closure of the unit. Having noticed the situation, the Commissioner of Labour, Coimbatore, requested the State to issue notification u/s 10-B, but the management opposed the same and by letter dated 2nd May, 2007, requested the Minister of Labour not to pass such order u/s 10-B of the Act.

In the meantime, a number of new workers were engaged by the management. This aggravated the situation. The State Government having noticed all the relevant facts, issued G.O. (D) No.397 dated 24th May, 2007, referring further dispute u/s 10 (1) (d). Another order, G.O. (D) No.398 was issued on 24th May, 2007, u/s 10-B whereby the State Government directed the management and workers to follow certain norms and it was ordered not to give effect to the order of transfer or break-in-service.

5. Mr. A.L.Somayaji, learned senior counsel appearing on behalf of the management took the following plea while assailing the order, G.O. (D) No.287 dated 10th April, 2007, issued u/s 10 (3) of the Act :-

a) The State Government cannot avail power u/s 10 (3), the very same issue, i.e., lockout and strike being matters of adjudication before the Labour Tribunal. According to him, order prohibiting strike or lockout u/s 10 (3) could be passed in connection with reference of some other dispute, but not in connection with reference, wherein strike and lockout is the dispute referred.

b) Strike and lockout having referred to as dispute for adjudication u/s 10 (1) (d), any order prohibiting strike or lockout u/s 10 (3) will amount to interference with the procedure of industrial tribunal, which has to give final verdict.

c) The power u/s 10 (3) cannot be exercised except in rarest case, where public interest is involved.

d) The impugned order has to be tested on the basis of the reasons mentioned in the Government Order, which do not satisfy the principle of reasonableness and so the order must fail.

e) It was incumbent on the part of the State to give opportunity to the management before issuance of order u/s 10 (3), failure of which resulted in violation of rules of natural justice.

6. So far as the order issued u/s 10-B vide G.O. (D) No.398 dated 24th May, 2007, is concerned, the following submission was made by the learned senior counsel for the management :-

i) The State Government had no jurisdiction to issue order u/s 10-B, the company being not a public utility service.

ii) In absence of any disturbance of public order, road blockade agitation having come to an end on 10th March, 2007, notification u/s 10-B was not called for.

iii) The order u/s 10-B having passed without notice to the company and in violation of Chapter V of the Act, it violates rules of natural justice.

7. The management has also challenged the reference as made by the State u/s 10 (1) (d) vide G.O. (D) No.397 dated 24th May, 2007 on the ground that there was no industrial dispute for reference. According to the learned senior counsel, there should be a demand by union for constituting a dispute and in its absence no dispute could be referred.

8. We have heard the parties and noticed the rival contentions. It is not in dispute that the State Government is empowered to refer any dispute for adjudication u/s 10 (1), if in its opinion a dispute exists or is apprehended. Under Section 10 (3), the appropriate Government may also prohibit continuance of any strike or lockout in connection with dispute already referred, as evident from the said provision and quoted hereunder :-

"10. Reference of disputes to Boards, Courts or Tribunals

* * * * *

(3) Where an industrial dispute has been referred to a Board, [Labour Court, Tribunal or National Tribunal] under this section, the appropriate Government may by order prohibit the continuance of any strike or lock-out in connection with such dispute which may be in existence on the date of the reference."

From the aforesaid provision it will be evident that there are two ingredients to be satisfied before issuance of order u/s 10 (3), i.e.,

a) an industrial dispute has been referred for adjudication; and
b) there is a strike or lockout in existence on the date of reference in connection with such dispute.

9. The aforesaid provision - Section 10 (3) fell for consideration before different Courts from time to time. In the case of Maharaja Kishangarh Mills Ltd. - Vs - State of Rajasthan reported in AIR 1953 Raj 188 :: (1953) II LLJ 214 (Raj) :: Manu/RH/0067/1953., a Division Bench of the Rajasthan High Court observed as follows :-

"In order that the strike or lock-out may be in connection with a dispute it is necessary that the strike or lock-out should be something different from the dispute itself. A strike or lock-out which is the subject-matter of the dispute itself cannot be termed to be a strike or lock-out in connection with such a dispute within the meaning of Section 10 (3). A strike or lock-out which is itself;f a dispute would not justify an order under Section 10 (3) for its prohibition because the language of Section 10 (3) requires that a strike or lock-out should be in connection with a dispute, in order that an order for its prohibition might be made by the Government. Where the strike is not in connection with a dispute but it itself a dispute the matter is quite different and would not justify an order of prohibition. The discretion of the Government therefore which has been exercised in the present case in making an order of prohibition is beyond the scope of Section 10 (3)."

Another Division Bench of the Andhra Pradesh High Court in the case of Eenadu Press Workers Union & Anr. - Vs - Government of Andhra Pradesh & Anr. reported in 1979 (1) LLJ 391, having noticed the fact that strike was in connection with a dispute referred, namely, dispute relating to claim for wages and D.A., held that the State Government was entitled to issue prohibitory orders u/s 10 (3). The Court further observed that it is not necessary for the State Government to issue a show cause notice to the parties before issuance of order u/s 10 (3). Though right to strike is a valuable right in the hands of the employees, but that is not a fundamental right.

In another case of State Transport Employees Federation, Orissa - Vs - State of Orissa & Ors. reported in 1990 LIC 1591, a Division Bench of Orissa High Court held that for invoking power u/s 10 (3), two conditions must exist, (i) there must be an industrial dispute in existence and (ii) such dispute must have already been referred for adjudication. The Court further held that the prohibition u/s 10 (3) cannot be exercised in respect of industrial dispute not referred.

The view taken by the various High Courts was also affirmed by the Supreme Court in the case of Delhi Administration - Vs - Workmen of Edward Eventers & Anr. reported in 1978 (II) LLJ 209 (SC). The relevant observation of the Supreme Court is quoted hereunder :-

"2. A plain reading of the sub-section leaves no room for doubt in our mind that the High Court has correctly interpreted it. Indeed, the learned Judges have gone into details, although we in this affirming judgment desire to express ourselves only briefly. Two conditions are necessary to make S. 10 (3) applicable. There must be an industrial dispute existing and such existing dispute must have been referred to a Board, Labour Court, Tribunal or National Tribunal under this section, namely, S. 10 (1). Section 10 stands as a self-contained code as it were so

far as this subject-matter is concerned. The prohibitory power springs into existence only when such dispute has been made the subject of reference under S. 10 (1). What then is such dispute? The suchness of the dispute is abundantly brought out in the preceding portion of the subsection. Clearly, there must be an industrial dispute in existence. Secondly, such dispute must have been already referred for adjudication. Then, and then alone, the power to prohibit in respect of such referred dispute can be exercised.

* * * * *

4. Shri Aggarwal pressed before us a ruling reported in *Keventers Karmachari Sangh v. Lt. Governor of Delhi and another*, [1971-II-LLJ 375], decided by the Delhi High Court. Although the ratio there is contrary to the same High Court's ruling which is the subject matter of the present appeal, we are obviously inclined to adopt the reasoning of the judgment under appeal. Imaging twenty good grounds of dispute being raised in a charter of demands by the workmen and the appropriate Government unilaterally and subjectively deciding against the workmen on nineteen of them and referring only one for adjudication, how can this result in the anomalous situation of the workmen being deprived of their basic right to go on strike in support of those nineteen demands. This would be production not of industrial peace, which is the object of the Industrial Disputes Act but counter-productive of such a purpose. If Government feels that it should prohibit a strike under S. 10 (3) it must give scope for the merits of such a dispute of demand being gone into by some other adjudicatory body by making a reference of all those demands under S. 10 (1) as disputes. In regard to such disputes as are not referred under S.10 (1), S.10 (3) cannot operate. This is suppressed by a prohibitory order and is not allowed to be ventilated for adjudication before a Tribunal will explode into industrial unrest and run contrary to the policy of industrial jurisprudence.

5. Thus, on principle and the text of the law, we are convinced that S. 10 (3) comes into play when the basis of the strike is covered by S. 10 (1). Reference of a dispute and prohibition of a strike on other demands is impermissible."

10. From the plain language of Section 10 (3) and the observation made by the different Courts and the Supreme Court, it will be evident that the State Government has power to invoke Section 10 (3) if an industrial dispute has been referred and in connection with the referred dispute a strike or lockout is in existence on the date of reference. If the competent Government feels necessity to prohibit a strike or lockout for maintaining industrial peace and for proper adjudication of the dispute, it can do so on deliberation of merit of such disputed demand, but such

order being administrative in nature, no prior notice is called for before issuance of such order u/s 10 (3) of the Act.

11. It is not in dispute that 4 workers of Plant-III and 2 workers of Plant-I were transferred on 3rd March, 2007 from Tamil Nadu to Uttrakhand. Other workers proceeded on strike since 3rd/5th March, 2007. In spite of steps taken by the Assistant Commissioner of Labour (C), Coimbatore on 7th March, 2007 and discussion made by the Commissioner of Labour, the matter was not settled giving rise to reference made u/s 10 (1) (d) vide G.O. (D) No.286 dated 10th April, 2007, which is not under challenge. The dispute related to transfer of the workers from one State to a far off State in the north and it is only for such dispute the workers had to proceed on strike and the management had to issue order of lockout in respect of 64 workers. Such dispute not connected with lockout or strike having been already referred, it was always open to the State, in public interest, to issue order u/s 10 (3) prohibiting continuance of strike and lockout. So far as the strike is concerned, if legality of such strike has been simultaneously referred along with other dispute, it will not divest the State from its power to issue order u/s 10 (3) of the Act.

12. In respect of order u/s 10-B of the Act is concerned, we are also of the opinion that no prior notice was required for passing such order u/s 10-B of the Act.

In the case of Malayalam Plantation (India) Ltd. & Anr. - Vs - Workmen of Kaliyar Estate & Ors. reported in 1984 (II) LLJ 247, a single Judge, while noticed that action as was taken without advertance to all relevant acts, which were necessarily to be considered before taking action u/s 10-B, held the action unrelated to the objective behind the section and prompted by extraneous factors, held the said order bad. But such is not the position in the present case and no allegation has been made that it was prompted by factors extraneous to the condition.

In the case of State of Karnataka - Vs - BPL Group of Companies reported in 2003 (II) LLN 999, a Division Bench of Karnataka High Court held that the order issued u/s 10 (1) (d) is purely administrative. However, in respect of order u/s 10-B, it was observed that it cannot be stated to be purely administrative and could be passed on subjective satisfaction of the Government. The Court held that if the condition precedent as envisaged u/s 10 (3) are present, the Government can simultaneously or immediately pass orders in terms with the said provision and for that reasonable opportunity should be offered to the parties. However, it has not been made clear as to how simultaneously orders could be passed u/s 10 (1) (d) and Section 10-B, if reasonable opportunity is to be afforded to the parties.

In another case of M/s.Metal Box India Ltd. - Vs State of Tamil Nadu reported in 1996 (I) LLJ 763 :: 1995 (11) LLN 814, a Division Bench of this Court held that Section 10-B applies to public utility service and not maintaining of industrial peace can be ground for invoking power u/s 10-B of the Act.

A learned single Judge of this Court in the case of Premier Mills Ltd. - Vs - State of Tamil Nadu reported in 2003 (I) LLJ 993, held that for issuance of order u/s 10-B, the Government has to form opinion for the necessity to issue order and principle of natural justice to be followed. However, no deliberation has been made on the issue as to how order u/s 10 (1) and 10-B can be passed simultaneously, if principles of natural justice is to be followed.

13. For proper appreciation of the matter, it is desirable to quote Section 10-B, as hereunder :-

"10-B. Power to issue order regarding terms and conditions of service pending settlement of disputes.- (1) Where an industrial dispute has been referred by the State Government to a Labour Court or a Tribunal under sub-section (1) of Section 10 and if, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment concerning which such reference has been made, they may, by general or special order, make provision -

(a) for requiring employers or workmen or both to observe such terms and conditions of employment as may be specified in the order or as may be determined in accordance with the order, including payment of money by the employer to any person who is or has been a workman.

(b) for requiring any public utility service not to close or remain closed and to work or continue to work on such terms and conditions as may be specified in the order; and

(c) for any incidental or supplementary matter which appears to them to be necessary or expedient for the purpose of the order.

* * * * *

(2) An order made under sub-section (1) shall cease to operate on the expiry of a period of six months from the date of the order or on the date of the award of the Labour Court or the Tribunal, as the case may be, whichever is earlier."

From plain reading of Section 10-B it will be evident that order u/s 10-B can be passed simultaneously with order making reference u/s 10 (1) for securing public safety or convenience or maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or industrial peace in the establishment, etc. Such power of maintenance of public safety, public order or supplies and services essential to the life of the community being administrative in nature, we are of the view that the order u/s 10-B is an administrative order.

14. Almost similar provision fell for consideration before the Supreme Court in the case of Basti Sugar Mills Company Ltd. - Vs - State of U.P. reported in 1978 (II) LLJ 412. Under Section 3 of the U.P. Industrial Disputes Act, State Government was empowered to prevent strike, lockout, etc, in connection with any industrial dispute. Relevant portion of Section 3 of the U.P Industrial Disputes Act is quoted hereunder :-

"3. Power to prevent strikes, lock-outs, etc. - If, in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order of supplies and services essential to the life of the community, or for maintaining employment, it may be general or special order, make provision - (Emphasis added)

(a) for prohibiting, subject to the provisions of the order, strikes or lock-outs generally, or a strike or lock-out in connection with any industrial dispute;

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

(c) for appointing committees, representative both of the employer and workmen for securing amity and good relations between the employer and workmen and for settling industrial disputes by conciliation ; for consultation and advice on matters relating to production, organisation, welfare and efficiency;

(d) for constitution and functioning of Conciliation Board for settlement of industrial disputes in the manner specified in the order;

* * * * *

Provided that no order made under cl. (b) --

(i) shall require an employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;

* * * * *

The Supreme Court, in the said case of Basti Sugar Mills (supra), having noticed the aforesaid provision, held as follows :-

"26. Section 3 serves this limited purpose of legalising administrative intervention to prevent disorder without prejudice to judicial justice which will eventually be allowed to take its course. An order under S.3 (b) is administrative ; a proceeding under the Bonus Act is judicial. The former manages a crisis, the latter determines rights. Even when a direction under the exigency power involve payments towards bonus or other claim it never can possess finality and is subject to judicial decision - except, of course, where parties agree to settle their claims, and then the agreement gives it vitality.

27. The jural scheme of S. 3 is dual, each operating in

its own stage and without contradicting the power of the other. The first say, in crisis management, belongs to the Tribunal. The pragmatic dichotomy of the law is flexible enough not to put all its peace-keeping eggs in the judicial basket. Government acts when the trouble brews and when the storm has blown over judicial technology takes over. There are no right compartmentalisations. Sometimes, the judicial process itself has quick-acting procedures. Likewise, sometimes the executive proffers to consult before going into action. Under our constitutional order, guidelines are given by the statute to ensure reasonableness in administrative orders. And in a Government with social justice as the watchword, value judgments are essential to exclude arbitrariness. So it is that the executive power under S. 3 has the leading strings writ right at the top. The power shall be used only for "public safety" or convenience or the maintenance of public order or supplies and services essential to the life of the community or for maintaining employment. It prevails for the nonce, produces (hopefully) tentative truce, and then the judicial process decides decisively. It is like an executive magistrate passing a prohibitory order regarding disputed possession or unruly assembly to prevent breach of the peace and making over to a judicial magistrate to hear and decide who is in actual possession or whether the restriction on movement was right. Or, may be, it is like a magistrate quickly passing orders regarding a possessory dispute leaving it to the civil Court to adjudicate on valid title. No one can argue that preventive magisterial power, admittedly provisionally and reasonably, is inconsistent with the civil judicial machinery which speaks finally."

As power invested u/s 10-B of the Act is almost similar to the power invested u/s 3 of the U.P. Industrial Disputes Act, in view of the Supreme Court decision in Basti Sugar Mills case (supra) also, we hold that the power u/s 10-B is also an administrative order and, thereby, do not call for prior notice or hearing before passing such order.

15. Further, as for securing public safety or maintaining of public order, or for industrial peace in the establishment, it is open to the State to pass order u/s 10-B of the Act requiring the employer or workmen or both to observe such terms and conditions of employment as may be specified in the order, it cannot be confined only to public utility service.

In the present case, having noticed the relevant fact, including strike, closure, mass agitation, road blockade agitation, political involvement in the matter and for maintaining public order and industrial peace, if the State has issued an order u/s 10-B, no interference is called for against such order.

16. So far as challenge to a reference of a dispute is concerned, it is open to a party to show that there is no industrial dispute or what has been referred is not an industrial dispute. In the case of Shambu Nath Goyal - Vs - Bank of Baroda, Jullundur reported in 1978 (1) LLJ 484 (SC), the Supreme Court observed as follows :-

"A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written cause is not a sine qua non unless of course in the case of public utility service, because S.22 forbids going on strike without giving a strike notice.

The key words in the definition of industrial dispute are "dispute" or "difference". That is the contention of these two words. In Beetham v. Trinidad Cement Ltd., All K.S. 244 at 249, Lord Denning while examining the definition of expression "Trade dispute" in S.2 (1) of Trade Dispute (Arbitration and Inquiry) Ordinance of Trinidad observed :-

"By definition a 'trade dispute' exists whenever a 'difference' exists and a difference can exist long before the parties became locked in a combat. It is not necessary that they should have come to blows. 'It is sufficient that they should be sparring for an opening.'"

5. Thus the term "industrial dispute" connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section."

In the case of Secretary, India Tea Association - Vs - Ajith Kumar, Bharath & Ors. reported in 2000 (2) LLN 25, similar observation was made that it would be open to a party to show that what has been referred to by Government is not an industrial dispute within the meaning of the Act. The Apex Court further held that order u/s 10 (1) is an administrative order.

While similar observation was made in the case of ANZ Grindlays Bank Ltd. @ Standard Chartered Grindlays Bank Ltd. - Vs - Union of India reported in 2006 (2) CTC 589 (SC), Supreme Court cautioned and observed that a normal writ petition under Article 226 of the Constitution of India should not be entertained against an order of appropriate Government

making reference u/s 10 of the Act as the parties would get opportunity to lead evidence before the labour court or industrial tribunal to show that the claim made is either unfounded or there is no occasion for making reference. It is only where it is found that the reference is futility, which can be demonstrated from bare reading of the terms of reference and admitted facts, the Court could examine the proceeding under Article 226.

In the present case, from bare reading of the terms of reference and admitted facts it cannot be held that there is no dispute between the parties. The only question as raised is whether the parties made any claim before reference and it was not entertained? It is brought to the notice of the Court by the State that the Labour Commissioner tried to settle the dispute amicably. In this background, it cannot be held that the reference as made is futility, though on the basis of the evidence it is always open to the management to show that the claim as made is unfounded or there is no occasion for making such reference.

17. Having regard to the facts that one of the writ petition, W.P. No. 13742/07 has become infructuous and the trade union has not pressed the two writ petitions, i.e., W.P. Nos.13743/07 and 18075/07, they are dismissed as infructuous and for non-prosecution. So far as the writ petitions, W.P. Nos.14024/07, 19077/07 and 19078/07 are concerned, in view of our observation and as we find no merit, they are also dismissed. Further, in view of the interim order dated 13th May, 2007, as challenged in W.A. No.777/07, as industrial peace has been restored during the pendency of the reference, we do not want to disturb the position and, thereby, not inclined to interfere with the order passed by learned single Judge dated 13th May, 2007. The said order dated 13th May, 2007, shall continue till the dispute as referred are finally adjudicated by the tribunal. The parties are supposed to co-operate in the matter. The industrial tribunal is advised to decide the reference on an early date without giving unnecessary adjournments to the parties. Consequently, connected miscellaneous petitions are closed. But there shall be no order as to costs.

सत्यमेव जयते

Sd/
Asst.Registrar

/true copy/
WEB COPY

Sub Asst.Registrar

GLN

To

1. The Secretary to Government
Labour & Employment Department
Secretariat, Chennai 600 09.

2. The Presiding Officer
Industrial Tribunal
Chennai 600 009.

3. The Commissioner of Labour,
Labour Welfare Building,
DMS Compound, Chennai - 6.

4. The Joint Commissioner of Labour,
Dr.Balasundaram Road,
Coimbatore - 641018.

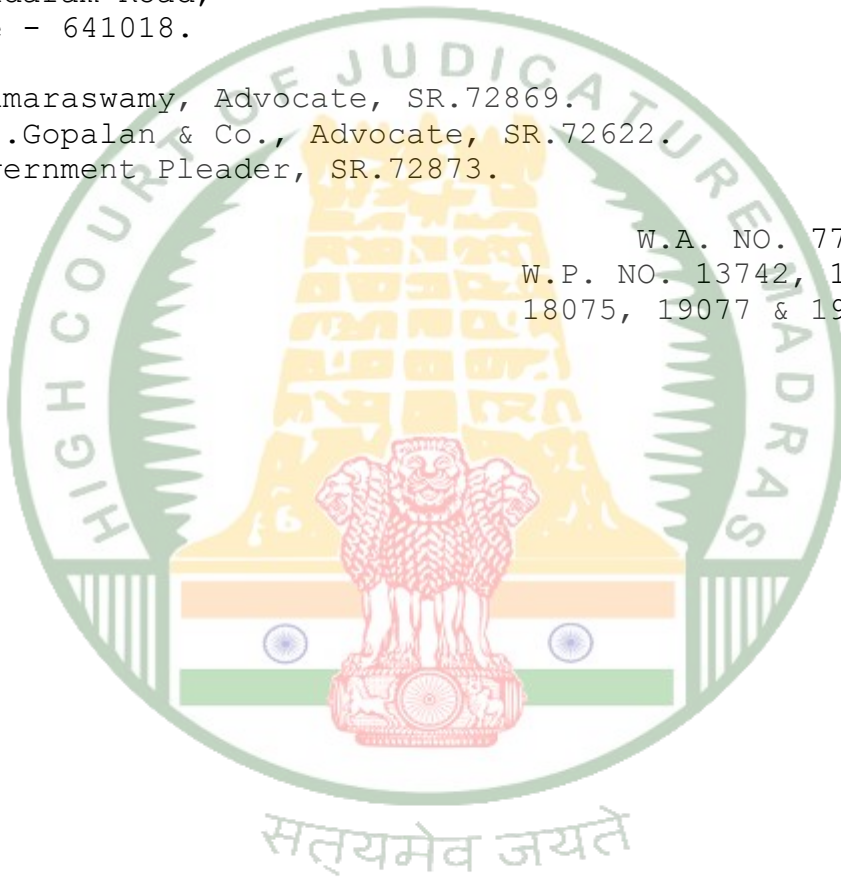
1 cc To Mr.S.Kumaraswamy, Advocate, SR.72869.

1 cc To M/s.T.S.Gopalan & Co., Advocate, SR.72622.

1 cc To The Government Pleader, SR.72873.

W.A. NO. 777 OF 2007
W.P. NO. 13742, 13743, 14024,
18075, 19077 & 19078 OF 2007

BS (CO)
RVL 02.01.2008.



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